fulfilled its functions when it has found a remedy for actual or threatened wrong for which the law furnished no adequate redress, and it cannot properly take jurisdiction where it is not shown that the wrong which is feared will probably result from the wrongful acts of the parties who are before the court, without the intervention of persons to the court unknown. *N. Y. &c. R. Co.* v. *Reeves* (Ct. App. N. Y.), 30 N. Y. Law Journal, 287.

RECEIVERS—ACTIONS AGAINST—STATE AND FEDERAL COURTS.—An action brought in the state court against receivers of a railroad company, appointed by a federal court, may proceed to final judgment against the receivers, notwithstanding they had, in the meantime, been discharged and the road sold under foreclosure, the decree of sale in the federa court containing a provision that the purchaser would take the property subject to all obligations and liabilities of the receivers. While the Code of Civil Procedure (sec. 756) authorizes, in such a case, substitution of the purchaser as party defendant, yet when neither party has asked for substitution the action may proceed to judgment as against the receivers, and the purchaser, by the terms of sale, will be bound by it.

The provision of the United States statute authorizing actions to be commenced in a state court against receivers appointed by the federal court, without first obtaining leave of the latter court, and that "such suits shall be subject to the general equity jurisdiction of the court in which such receiver was appointed," does not contemplate reserving to the federal court exclusive jurisdiction to establish claims to the fund after sale of the property and discharge of the receiver; but simply that all claims, in whatever court they are established, may be disposed of at the foot of the decree with reference to the rights of all the creditors. *Baer* v. *McCullough, Receiver* (Ct. App. N. Y.), 30 N. Y. Law Journal, 223.

CONTRACTS.—FRAUDULENT PROCUREMENT—RELIEF AT LAW.—One who has been fraudulently induced by an agent of a telephone company to execute a release under seal of the right to construct and maintain a telephone line in the highway along his property, the agent representing that the paper was only a receipt for $1 paid him for trimming one of his trees, is not precluded by his own negligence in failing to read the paper before signing it, from thereafter maintaining an action of ejectment against the company to compel it to remove the poles and for damages.

The plaintiff is not obliged to appeal to a court of equity for relief against his deed, but may avoid it, when set up by the company in defense of his action of ejectment, by proof of the fraud in its execution.

Nor is he obliged, in such a case, to return the consideration paid him on executing the instrument. *Wilcox* v. *American Telephone etc. Co.* (Ct. App. N. Y), 30 N. Y. Law Journal, 261. Citing *Albany City Sav. Instn.* v. *Burdick*, 87 N. Y. 40.

Upon the question of practice, the court said, per Cullen, J:

"The practice adopted by the plaintiff was entirely proper. He was not obliged to appeal to a court of equity for relief against the deed, but when

it was set up to defeat his claim he could avoid its effect by proof of the fraud by which it was obtained (*Kirchner* v. *New Home Sewing Machine Co.*, 135 N. Y. 182). Nor was he obliged to return the dollar paid to him on its execution. The plaintiff does not attempt to rescind a contract as induced by fraud; the charge by him relates, not to the contract, but to the instrument which purports to represent the contract. In such a case the return of the consideration is unnecessary (*Cleary* v. *Municipal Elec. Light Co.*, 19 N. Y. Supp. 951; affirmed on opinion below, 139 N. Y. 643)."

For the sake of contrast, we present also the following:

1. The plaintiff, on entering the employment of the company, signed the contract mentioned in the opinion of the court, assuming all risks of accidents or casualties by railway travel, or otherwise, incident to the employment; *held*, in the absence of fraud (contested at the trial), the contract was unimpeached and binding upon the employe, although he did not read or understand it, the paper being the highest evidence of the agreement of the parties.

2. Where fraud, imposition or misrepresentation has intervened, the party is not bound; but, in their absence, failure to read, or have it explained, will not avail to annul the deliberate writing of the party. *N. Y. C. &c. R. Co.* v. *Difendoffer* (U. S. Cir. Ct. App. 7th Cir., Oct. 6, 1903), 27 Nat. Corp. Reporter, 194. Citing *B. & O. &c. Ry. Co.* v. *Voight*, 176 U. S. 498

Per Jenkins, Circuit Judge:

"Chief Justice Gibson, with his usual clearness and terseness, in *Greenfield's Estate*, 2 Harris, 496, states the rule thus:

'If a party who can read will not read a deed put before him for execution; or if, being unable to read, will not demand to have it read or explained to him, he is guilty of supine negligence, which I take it, is not the subject of protection, either in equity or at law.'

The rule has been abundantly sustained by the courts. Thus, in *Upton, Assignee*, v. *Tribilcock*, 91 U. S. 45, the court says:

"It will not do for a man to enter into a contract and, when called upon to respond to his obligations, to say that he did not read it when he signed it, or did not know what it contained. If this were permitted contracts would not be worth the paper on which they were written, but such is not the law. The contractor must stand by the words of his contract, and if he will not read what he signs he alone is responsible for his omission.'

"And in *Andrus* v. *St. Louis Smelting and Refining Company*, 130 U. S. 643, it is said, 'The law does not afford relief to one who suffers by not using the ordinary means of information, whether his neglect be attributable to indifference or credulity.' See also, *Chicago, St. P. M. & O. Ry. Co.* v. *Belliwith*, 28 C. C. A. 358, 83 Fed. 437; *Chicago & N. W. Ry. Co.* v. *Wilcox*, 54 C. C. A. 147, 116 Fed. 913; *Insurance Co.* v. *Hodgkins*, 66 Me. 109; *Pennsylvania Railroad Co.* v. *Shay*, 82 Pa. State, 198; *Keller et al* v. *Orr*, 106 Ind. 406; *Albrecht* v. *Milwaukee & Superior Railroad Company*, 87 Wis. 105. In the latter case, the party seeking to avoid his contract was a German. He did not read the paper he signed and said he could not read it,

and did not know whether it was read to him or not and did not know the contents of it; and the court said that it cannot be tolerated that a man shall execute a written instrument and, when called upon to abide by its terms, say merely that he did not read it, or did not know what it contained. It is needless to pursue the subject. The rule has been established time out of mind. 1 Shep. Touch. 56 (30 Law Lib. 121)."

CRIMINAL LAW—OMISSION TO PERFORM DUTY OF FURNISHING MEDICAL ATTENDANCE.—An offense committed under section 288 of the Penal Code, making it a misdemeanor for a person who wilfully omits to perform a duty, by law imposed upon him, to furnish medical attendance to a minor, is sufficiently described in an indictment which charges that the defendant wilfully, maliciously and unlawfully omitted, without lawful excuse, to perform a duty imposed upon him by law to furnish medical attendance to his minor child, who was suffering from catarrhal pneumonia, and that he willfuly and unlawfully neglected and refused to allow said minor to be attended and prescribed for by a regularly licensed and practicing physician. It is not essential to the validity of the indictment that it should expressly allege that the case was one in which a regularly licensed and practicing physician ought to have been called.

The language of the section, "a duty by law imposed," has reference to the person, parent or guardian, charged with the duty of caring for the minor; that is, that the person upon whom such duty is imposed is guilty of a misdemeanor for neglecting it.

The term "medical attendance" means attendance by a person who, under the statute (chap. 513, Laws of 1880), is a regular licensed physician.

The constitutional provision guaranteeing the free enjoyment of religious profession and worship without discrimination or preference, but that liberty of conscience hereby secured shall not be construed to justify practices inconsistent with the peace and safety of the state, does not afford immunity from the operation of section 288 of the Penal Code to one who, because of his religious belief that prayer for Divine aid was the proper remedy in case of sickness, refused to allow medical attendance for his minor child who was dangerously ill. *People* v. *Pierson* (Ct. App. N. Y.), 30 N. Y. Law Journal, 247. Citing *Barker* v. *People*, 3 Cow. 686; *Lawton* v. *Steele*, 119 N Y. 226; *Thurlow* v. *Massachusetts*, 5 How. 504.

Per Haight, J:

"We are aware that there are people who believe that the Divine power may be invoked to heal the sick, and that faith is all that is required. There are others who believe that the Creator has supplied the earth, nature's storehouse, with everything that man may want for his support and maintenance, including the restoration and preservation of his health, and that he is left to work out his own salvation, under fixed natural laws. There are still others who believe that Christianity and science go hand in hand, both proceeding from the Creator; that science is but the agent of the Almighty through which He accomplishes results, and that both science and